Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands;	)	IB Docket No. 01-185
	)	
Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands	)	IB Docket No. 02-364

PETITION FOR RECONSIDERATION

Pursuant to Section 1.429 of the Commission's rules,[1] the Cellular Telecommunications & Internet Association ("CTIA")[2] seeks reconsideration of the Commission's *MSS/ATC Report and Order*[3] that authorizes mobile satellite services ("MSS") to provide ancillary terrestrial services. In particular, CTIA asks the Commission to reconsider its decision to not adopt more rigorous gating criteria that would "ensure that the added terrestrial component remains ancillary to the principal

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1 47 C.F.R. § 1.429 (2003).

2 CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

3 *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, Report and Order, IB Docket No. 01-185, FCC 03-15, "*MSS/ATC Report and Order"*. (Published in the Federal Register on June 5, 2003).

MSS offering."[4] CTIA also seeks clarification of several issues discussed in the *MSS/ATC Report and Order*.

I. DISCUSSION

In light of the overwhelming evidence regarding the questionable viability of the mobile satellite service industry, CTIA and many others argued that the Commission should have denied the MSS licensees' requests for Ancillary Terrestrial Component ("ATC") authority in the *MSS/ATC Report and Order*. In the Order, the Commission instead chose to grant MSS licensees ATC authority, and claimed it was adopting measures to ensure that any ATC offering was "ancillary" to the licensed MSS offering. CTIA submits that the gating criteria the Commission adopted are not adequate to achieve the stated goal of maintaining ATC service as "ancillary," and seeks reconsideration of those measures. The Commission should ensure there are no loopholes that enable MSS licensees to "game" the ATC granting process so as to provide ATC service that is not in conformance with the Commission's intent.

A major step in that regard would have been the codification of more significant gating criteria than the Commission ultimately chose to adopt. As CTIA recommended in its December 17, 2002, letter to Chairman Powell, the FCC should have "put any gating criteria that it [was] considering out for comment before moving ahead."[5] CTIA continued that "a hasty decision by the Commission granting ATC [would] most likely result in a morass of legal proceedings, and a guarantee that this spectrum would either lie fallow or be inefficiently used for years to come." That prediction has come to

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4 *MSS/ATC Report and Order* at ¶ 1.

fruition with the likelihood of multiple Petitions for Reconsideration being filed by parties on all sides of this proceeding.

II. MORE RIGOROUS GATING CRITERIA ARE NECESSARY TO ENSURE ATC WILL REMAIN AN ANCILLARY SERVICE

In the first paragraph of the *MSS/ATC Report and Order*, the Commission states that it "will authorize MSS ATC subject to conditions that ensure that the added terrestrial component remains ancillary to the principal MSS offering."[6] CTIA agrees with the Commission's approach, *in principle*, regarding the grant of ATC. However, CTIA believes the Commission did not do enough to ensure that the ATC service would remain "ancillary" *in practice.* In fact, under the rules adopted in the *MSS/ATC Report and Order*, the ATC service may become primary in many areas. In order to ensure that any grant of ATC authority is not simply a pretense for MSS carriers to acquire a terrestrial service capability without having to pay for that right at auction, CTIA believes the Commission must reconsider the gating criteria it adopted, focusing in part on the clear and objective conditions proposed by CTIA in its December 17 letter to Chairman Powell.[7]

While the Commission adopted several of the gating principles contained in the CTIA letter, others that could aid the Commission in achieving its stated goals were either ignored or dismissed without adequate justification by the Commission. For example, in its December letter to Chairman Powell, CTIA argued that

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5 *See* December 17, 2002 CTIA Letter from Tom Wheeler to Chairman Michael K. Powell, ("CTIA Letter") IB Docket No. 01-185, ET Docket No. 95-18.

6 *MSS/ATC Report and Order* at ¶ 1.

7 CTIA Letter at 3.

> The amount of separate bandwidth that is set aside for the ATC must be relatively small and limited so as to leave sufficient bandwidth to meet the system's satellite traffic demands, and to ensure that rural users and others who truly need access to satellite capacity have a minimal probability of encountering a busy signal. A reasonable criterion would be that the capacity in any satellite antenna beam is never reduced by more than 20% from what it would be in the absence of an ancillary terrestrial component. Another approach would be to limit the minutes of use on the ATC to 20% of the minutes used on the satellite service.[8]

These proposed criteria were intended to ensure that enough spectrum remained after initiation of ATC to operate a valid satellite system.

This issue was addressed in part in the *MSS/ATC Report and Order* through the adoption of geographic coverage requirements. The Commission stated that "an MSS licensee that wishes to provide ATC must ensure that it remains capable of providing the necessary throughput to maintain space-segment service across the entire geographic area stipulated in our rules and policies for that operator's particular space-station system geometry and frequency band."[9] However, this geographic requirement does not ensure that what remains for satellite service is adequate, as CTIA had suggested.[10] Instead, the Commission stated that "requiring MSS licensees to ensure that satellite services constitute the "predominant" or "primary" use of their systems – whether measured in minutes of use or by number of customers – would limit spectrum efficiency."[11]

The Commission does not explain how much spectrum must remain for satellite service, only that "ATC base stations shall use less than all available MSS frequencies when using all available frequencies for ATC base station operations would exclude

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8 *Id.* at 3.
9 *MSS/ATC Report and Order* at ¶ 75.
10 CTIA Letter at 3.

otherwise available signals from MSS space-stations."[12] These requirements are not sufficient to ensure that any ATC offering is ancillary, or that the satellite service is truly viable. In fact, the *MSS/ATC Report and Order* contemplates that in many areas, only ATC will be utilized, even if a satellite signal is available.[13] The language contained in the Order would allow an MSS licensee to maintain only the absolute minimum amount of spectrum for its satellite service. If the Commission's goal is to require MSS providers to offer more than a token level of satellite service, it should reconsider its gating criteria, along the lines proposed by CTIA, to ensure a *primary* satellite service and an *ancillary* terrestrial service.

Additionally, in the *MSS/ATC Report and Order*, the Commission states it will "authorize MSS licensees to implement ATCs, provided that the MSS licensee . . . provides integrated ATC."[14] The Commission, however, failed to provide sufficient insight into what "integrated ATC" entails. CTIA had offered several proposals as to what could qualify for an integrated MSS/ATC service. The Commission, however, only specifically addressed one of CTIA's proposals -- use of a dual-mode handset. As part of its "integrated service offering" requirement, the Commission established a safe harbor of meeting this requirement for any licensee that chooses a dual mode handset.

More importantly, the Commission did not establish prerequisites for MSS licensees that do not choose the safe harbor. For example, the Commission did not require that handsets, as part of an integrated satellite and terrestrial network, be required

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11 *MSS/ATC Report and Order* at ¶ 99.

12 *See id.* at Appendix B, p. 144 (§25.147(a)(6) of the new rules).

13 *See id.* at ¶ 101.

14 *Id.* at ¶ 1.

to "look" first to the satellite, and only revert to the terrestrial mode if it cannot "see" the satellite, as CTIA had proposed in December.[15] Additionally, the Commission did not outlaw "ATC-only subscriptions," and did not require that "services and marketing packages offered to users when accessing the ATC [component be] the same as those offered via the satellite component."[16] These criteria were proposed to ensure MSS licensees seeking ATC authority will incorporate and integrate ATC into their satellite offering, making the satellite system primary and the terrestrial system ancillary.

Instead, the Commission ignored or dismissed CTIA's proposals without adequate explanation, adopting only one paragraph of language, and almost no specific detail, regarding integration of ATC and satellite services. The result will be an uncertain process for MSS licensees, with the strong possibility that the two services will never be truly integrated, as the Commission requires in the *MSS/ATC Report and Order*.[17] Accordingly, the Commission should reconsider its decision and adopt more specific guidelines in order to ensure that the satellite and ATC offering are truly integrated, and that any ATC offering is ancillary to the satellite offering.

These minimal enhancements to the gating criteria will benefit the public by ensuring that "MSS remains first and foremost a satellite service,"[18] while providing MSS licensees with certainty as they file for ATC authority.

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15 CTIA Letter at 3.
16 *Id.* at 3.
17 *MSS/ATC Report and Order* at ¶ 3.
18 *Id.* at ¶ 88.

III. THE COMMISSION SHOULD CLARIFY CERTAIN AMBIGUITIES IN THE ORDER

A. Personal Data Assistants And Other Computing Devices Should Be Included In The Integrated Service Offering Requirements

In the *MSS/ATC Report and Order*, the Commission stated that MSS ATC applicants "must make an affirmative showing to the Commission that their ATC service offering is truly integrated with their MSS offering,"[19] and notes that this "affirmative showing" can be satisfied either by complying with a "safe harbor" standard or through an individualized Commission assessment of the service offering.[20] However, this section of the *MSS/ATC Report and Order* also contains a footnote stating that "[w]e do not believe that this same requirement should be imposed on Personal Data Assistants (PDAs), laptops, or other computers."[21] Based on the placement of the footnote, it is unclear whether this exception applies only to the safe harbor standard, or exempts PDAs and other computing devices from the integrated service requirement entirely. Regardless of whether the footnote applies only to the safe harbor or provides a blanket exemption, there is no reason to treat PDAs or other computing devices that contain an MSS offering with an ATC component any differently than a handset with the same functionality.

As the Commission is aware, a number of PDAs containing both a wireless voice and data component are currently sold in the U.S. market. As personal computing devices and PDAs continue to gain acceptance and market share, it appears likely that additional wireless functionalities will continue to be integrated with these devices and

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[19] *MSS/ATC Report and Order* at ¶ 87.
[20] *Id*. at ¶¶ 87-88.

may – in the future – contain an MSS component. Since these devices will contain the same functionality as an MSS handset, it is inappropriate to exempt PDAs or computers. Accordingly, CTIA urges the Commission to delete footnote 229 from the *MSS/ATC Report and Order* to clarify that all devices offering MSS service with ATC will be subject to the same "affirmative showing" that the ATC component is truly integrated with the MSS offering.

B. MSS Licensees Should Not Be Able To Use The Satisfaction Of Gating Criteria And Milestones In One Band As A Means To Seek ATC Authority In Another Band.

CTIA notes that several MSS licensees either have, or may seek to obtain, licenses in more than one MSS band. While the Commission was silent on the issue of whether a company only has to satisfy the milestone and gating criteria requirements once, CTIA believes it was the Commission's intent that satisfaction of milestone requirements and gating criteria *prior* to grant of ATC authority was a condition of each license. The Commission's grant of multiple MSS licenses in each MSS band was designed to spur satellite competition in those bands. An MSS licensee should not be able to avoid its satellite obligations -- the sole reason for obtaining the license outside of the auction process -- in one band by claiming it has satisfied those obligations in another band. The Commission should clarify this obligation so there is no dispute as to MSS licensees' obligation in this regard.

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[21] *Id*. at n.229.

C. The Commission's Sua Sponte Order On Reconsideration Helped Clarify Several Of The Outstanding Issues From The Order.

CTIA commends the Commission for choosing on its own motion[22] to address several of the uncertainties that existed in the *MSS/ATC Report and Order*. In particular, CTIA supports the Commission's decision to make ATC applications available for review and comment,[23] in order to provide maximum participation for all stakeholders that have an interest in this process. CTIA also supports the Commission's decision to provide more detail as to when a party can file for ATC authority, as certain parties[24] had argued that the *MSS/ATC Report and Order* allows MSS licensees to obtain ATC authority prior to satisfying the gating criteria that was clearly delineated in the Order. CTIA believes the Commission's decision to allow MSS licensees to apply for ATC authority before satisfying the established gating criteria is acceptable, as long as that authority is not actually granted until all criteria are met, as the Commission concluded in the *sua sponte* Order on Reconsideration.[25] This rationale is in line with the plain language of the *MSS/ATC Report and Order*, which made compliance with the gating criteria a key precondition for obtaining ATC authority.

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22 *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, Order on Reconsideration, IB Docket No. 01-185 ("*Sua Sponte* Order") (rel. July 3, 2003).

23 *Sua Sponte* Order at ¶ 14.

24 *See, e.g.* Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Cheryl A. Tritt, Counsel to ICO Global Communications (Holdings) Ltd., IB Docket No. 01-185 (filed June 26, 2003); Mobile Satellite Ventures Subsidiary LLC, Request for Minor Modification of L-Band Space Station License (AMSC-1) for Authority to Construct and Operate an Ancillary Terrestrial Component, SAT-MOD-20030604-00110 (filed June 4, 2003) (requesting ATC authority without detailing compliance with MSS Flex Order gating criteria).

25 *Sua Sponte* Order at ¶ 7-12.

IV. CONCLUSION

For the foregoing reasons, the Commission should reconsider its *MSS/ATC Report and Order* in this Proceeding and instead adopt CTIA's proposals discussed above.

Respectfully submitted,

/s/ Michael F. Altschul

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July 7, 2003

CERTIFICATE OF SERVICE

I, Christine Blomquist, hereby certify that on this 7th day of July, 2003, the foregoing Petition for Reconsideration of the Cellular Telecommunications & Internet Association were filed electronically on the FCC's Electronic Comment Filing System and copies were served via first class mail, postage pre-paid, to the following:

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